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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S MOTION FOR
ADMINISTRATIVE LEAVE TO PROPOSE
REVISED BRIEFING SCHEDULE ON
PLAINTIFFS' MOTION FOR ORDER
REQUIRING GOOGLE TO SHOW CAUSE
WHY IT SHOULD NOT BE SANCTIONED
FOR DISCOVERY MISCONDUCT**

Re: Dkts. 430, 443

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

In accordance with Rule 6(b) of the Federal Rules of Civil Procedure and Local Civil Rules 6-3 and 7-11, Google, LLC (“Google”) moves the Court for leave to extend by one week the Briefing and Hearing Schedule on Plaintiffs’ Request For An Order For Google To Show Cause For Why It Should Not Be Sanctioned For Discovery Misconduct (the “OSC Motion”). This request is required because Plaintiffs refused to stipulate to a modest extension despite Google’s prior accommodation of Plaintiffs’ similar recent request (Dkt. 431). Trebicka Decl. ¶ 9-10.

Pursuant to this Court’s March 1, 2022 Order (Dkt. 443), the Opposition Brief is due by March 24, 2022 – the same day Google’s Opening Expert Reports are due in *Calhoun v. Google, LLC*, Case No. 4:20-cv-05146-YGR-SVK (Dkt. 505), and the day before Google’s Opening Expert Reports are due in this case. The *Brown* Plaintiffs’ have made several serious (albeit meritless) allegations in their 25-page OSC Motion and have also filed a declaration and nearly 200 pages of exhibits. The OSC Motion also purports to “incorporate by reference” their October 14, 2021 Rule 37(b) Motion, which is 20 pages and includes approximately 145 pages of declarations and exhibits.

There are currently 24 depositions in the related *Brown* and *Calhoun* cases being scheduled in the three weeks between Plaintiffs’ filing of the OSC Motion and the current deadline for the Opposition Brief. This includes multiple Rule 30(b)(6) depositions and depositions of Googlers based in Europe that require compliance with the Hague Convention. During this same period, Google also has over a dozen critical deadlines for both dispositive and non-dispositive issues across both matters including, but not limited to, *four* hearings before the Court, numerous hearings with the Special Master, information requests from the Special Master, various discovery briefing deadlines, numerous deadlines for providing outstanding discovery, as well as briefing related to class certification experts. Given the exceedingly technical nature of the case and its complex history, this is not a situation that can be solved by simply adding more outside (or in-house) lawyers.

1 To ensure that Google counsel can continue to satisfy the many pending requests for
 2 information, meet upcoming briefing, hearing, and expert report deadlines, and zealously defend itself
 3 against the *Brown* Plaintiffs’ OSC Motion, Google respectfully requests a seven day extension of the
 4 deadlines listed in the Briefing and Hearing Schedule (Dkt. 443). The extension of time for the
 5 Opposition Brief will not prejudice Plaintiffs or require further revisions to the case schedule because
 6 the briefing and hearing will be completed well ahead of Plaintiffs’ deadline to file their motion for
 7 class certification (currently scheduled for May 26, 2022). Good cause supports the requested
 8 extension of time.
 9

10 II. BACKGROUND

11 On October 14, 2021, Plaintiffs filed a 20-page Motion Seeking Relief for Google’s Failure to
 12 Obey Discovery Order attaching approximately 145 pages of declarations and exhibits (Dkt. 292).
 13 Trebicka Decl., ¶ 3. On October 19, 2021, the Court stayed briefing of that motion “pending resolution
 14 of the issues set forth in the forthcoming [Special Master Discovery] Report and Recommendations.”
 15 (Dkt. 297). *Id.*
 16

17 On Saturday, February 26, 2022, Plaintiffs filed the OSC Motion and attached nearly 200
 18 pages of exhibits and a declaration in support (Dkt. 430). Trebicka Decl., ¶ 4. The Court subsequently
 19 set an evidentiary hearing date on the OSC Motion for April 21, 2022 at 10:00 a.m., and ordered
 20 Google to file its Opposition Brief by March 24, 2022. (Dkt. 443). *Id.* at ¶ 5. On that same day,
 21 Google must also submit its opening expert reports in *Calhoun*. *Id.* at ¶ 6. The next day, Google’s
 22 opening expert reports in *Brown* are due. *Id.*
 23

24 In addition, the parties in both *Brown* and *Calhoun* are scheduling 24 depositions in the period
 25 between February 26 and March 24, 2022, including approximately 15 Rule 30(b)(6) depositions.
 26 Trebicka Decl., ¶ 7. Google also has over a dozen important deadlines on both dispositive and non-
 27
 28

dispositive issues, motions, hearings, etc. These deadlines include, but are not limited to, the following:

<u>Case</u>	<u>Subject</u>	<u>Relevant Dkt.</u>	<u>Deadline</u>
Both	End of Fact Discovery	Dkts. 464, 505	March 4
<i>Brown</i>	Further meet and confer, filings, productions, and likely briefing re priority issues: P23, P25, P26, P28, P29, P30	Dkts. 447, 450	by March 2, 3, 4, 9, 11, and 15
<i>Calhoun</i>	Further meet and confer, filings, productions, and likely briefing re priority issues: 1.20, 1.23	Dkt. 523	by March 3, 4, 7, 11, and 15
Both	Final Discovery Chart	Dkts. 447, 523	filed by March 11
<i>Brown</i>	Omnibus discovery hearing	Dkts. 447, 523	March 15
<i>Calhoun</i>	Hearing on Motion for Summary Judgment on Affirmative Defense of Consent	Dkt. 505	March 15
<i>Brown</i>	Hearing on Plaintiffs' Motion to Amend Complaint	Dkt. 395	March 15
<i>Calhoun</i>	Google's Reply ISO Motions to Strike Plaintiffs' Expert Reports ISO Class Certification (Mangum)	Dkt. 505	March 16
<i>Calhoun</i>	Google's Reply ISO Motions to Strike Plaintiffs' Expert Reports ISO Class Certification (Turow/John)	Dkt. 505	March 16
Both	Omnibus discovery hearing	Dkt. 529	March 17
<i>Calhoun</i>	Google's Opposition to Plaintiffs' Motion(s) to Strike Expert Testimony (Schwartz)	Dkt. 505	March 23
<i>Calhoun</i>	Opening Expert Reports	Dkt. 505	March 24
<i>Brown</i>	Opening Expert Reports	Dkt. 431	March 25
Both	Numerous Special Master Orders and Deadlines	n/a	Currently Daily
Both	Meetings with Special Master	n/a	Currently Daily
Both	Meet and Confers with both plaintiffs	n/a	Daily
Both	Numerous Motion to Seals and Declarations in Support of the various filings under seal	varies	Daily
Both	At least 24 Google Witness Depositions, including 15 Rule 30(b)(6) depositions	n/a	various dates in March 2022

On February 21, 2022, *Brown* Plaintiffs’ requested, as a courtesy, that Google consent to extend the deadline for opening expert reports until March 25, 2022 (the day after the deadline the Court scheduled Google’s Sanctions Opposition and the same day for Google’s opening expert reports in *Calhoun*). Trebicka Decl. ¶ 9. Google agreed to grant the courtesy. *Id.*

On March 2, 2022, Google requested, as a courtesy, that Plaintiffs agree to extend Google’s deadline for filing its Sanctions Opposition (*i.e.*, the relief requested herein). *Id.* at ¶ 10. Plaintiffs declined to grant the courtesy, necessitating this motion. *Id.*

III. ARGUMENT

The Court has “wide discretion to enlarge ... time limits” pursuant to Rule 6(b). *Plumbers & Pipefitters Loc. 572 Pension Fund v. Cisco Sys., Inc.*, 2005 WL 1459555, at *3 (N.D. Cal. June 21, 2005). Under Rule 6 of the Federal Rules of Civil Procedure, “the court may, for good cause, extend” deadlines “if a request is made, before the original time or its extension expires.” Fed. R. Civ. P. 6(b)(1). Rule 6 is “to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (quotations omitted). “Consequently, requests for extensions of time made before the applicable deadline has passed should normally ... be granted in the absence of bad faith or prejudice to the adverse party.” *Id.* (citations omitted).

Good cause exists to grant the modest extension requested. Plaintiffs’ motion raises serious accusations and seeks extraordinary relief, such as adverse instructions and payment of fees (Dkt. 430).¹ Courts recognize that such relief is extreme and “should [not] be imposed casually.” *Apple Inc. v. Samsung Elecs. Co.*, 888 F. Supp. 2d 976, 994 (N.D. Cal. 2012) *citing Rinkus Consulting Grp.*,

¹ Plaintiffs also “ask the Court to reinstate [their] October 14, 2021, Rule 37(b) Motion,” (Dkt. 430) which requests “that the Court rule that certain facts are established for this action and that Google be precluded from opposing class certification or making any other arguments in this case on the ground that the withheld data is not linked with or linkable to users” (Dkt. 292). This is an improper request because the briefing for that Motion has been stayed, the Court has not scheduled briefing on it, and Google has not had an opportunity to respond.

1 *Inc. v. Cammarata*, 688 F.Supp.2d 598, 619 (S.D.Tex.2010) (adverse inferences are “among the most
 2 severe sanctions a court can administer”); *Keithley v. Homestore.com, Inc.*, 2008 WL 4830752, at *10
 3 (N.D.Cal. Nov. 6, 2008) (“[A]n adverse inference instruction is a harsh remedy.”); *Consol. Aluminum*
 4 *Corp. v. Alcoa, Inc.*, 244 F.R.D. 335, 340 (M.D.La.2006) (adverse inference sanctions are “drastic”);
 5 *Thompson v. U.S. Dep’t of Housing & Urban Dev.*, 219 F.R.D. 93, 100–01 (D.Md.2003) (adverse
 6 inference sanctions are “extreme” and “not to be given lightly”); *Zubulake*, 220 F.R.D. at 219–20 (“In
 7 practice, an adverse inference instruction often ends litigation—it is too difficult a hurdle for the
 8 spoliator to overcome....Accordingly, the adverse inference instruction is an extreme sanction and
 9 should not be given lightly.”).

11 Google respectfully requests it be afforded sufficient time to prepare its response to a motion
 12 seeking such an extreme remedy. Although the schedule the Court ordered for briefing and hearing
 13 the Sanctions Motion would ordinarily be fair, the case schedules in these related cases have presented
 14 extenuating circumstances that necessitate a modest extension. Google is required to seek leave of the
 15 Court because Plaintiffs’ counsel rejected its request for a week extension as a professional courtesy.
 16 Regardless, because the “record shows that [Google’s] requested relief [is] reasonable, justified, and
 17 would not result in prejudice to any party,” there is good cause for the requested extension. *See*
 18 *Ahanchian*, 624 F.3d at 1260.

20 IV. CONCLUSION

21 Google respectfully requests that the Court extend the time for the Briefing And Hearing
 22 Schedule On Plaintiffs’ Motion For Sanctions (Dkt. 443) by one week and that the Evidentiary
 23 Hearing be conducted on April 28 or as soon thereafter as is convenient for the Court.
 24

25 DATED: March 4, 2022

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28 By /s/ Andrew H. Schapiro

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